

# **EXHIBIT E**

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 MICHAEL GRECCO PRODUCTIONS,  
4 INC.,

5 Plaintiff,

6 v.

7 ALAMY INC. and ALAMY LTD.

8 Defendants.

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)  
)  
)  
)  
) Case No.  
) 18Civ.03260 (PKC) (JO)

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14 CONFIDENTIAL ATTORNEYS' EYES ONLY

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17 VIDEOCONFERENCE DEPOSITION OF MICHAEL GRECCO

18 Taken Monday, September 14, 2020

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23  
24 Stenographically Reported by: DONNA J. RUDOLPH,  
25 RPR, CA. CSR NO. 9652, NV. CCR NO. 420





September 14, 2020

86 to 89

<p style="text-align: right;">Page 86</p> <p>1 searches using TinEye and Google Images.</p> <p>2 Q What is the Higbee portal?</p> <p>3 A One of the law firms I work with has a</p> <p>4 CRM, contact relationship manager, that's attached</p> <p>5 to an image search engine. They use two image</p> <p>6 search engines, I believe.</p> <p>7 Q Which two image search engines?</p> <p>8 A I'm not sure. I think it's Pixsy. I know</p> <p>9 it's Plague Hunter.</p> <p>10 MS. EDELSTEIN: Yeah. Do you want to take</p> <p>11 a ten-minute break?</p> <p>12 THE WITNESS: Yes, please.</p> <p>13 MS. EDELSTEIN: Okay. So let's meet back</p> <p>14 at 1:15.</p> <p>15 THE WITNESS: No, I'm going to meet back</p> <p>16 at 10:15.</p> <p>17 MS. EDELSTEIN: Oh, right. Okay.</p> <p>18 THE WITNESS: All right. Thanks.</p> <p>19 THE VIDEOGRAPHER: We are going off the</p> <p>20 record. The time is 10:04 A.M.</p> <p>21 (Brief recess.)</p> <p>22 THE VIDEOGRAPHER: Going back on the</p> <p>23 record. The time is 10:16 A.M.</p> <p>24 MS. EDELSTEIN: And we're going to</p> <p>25 introduce Defendant's Exhibit K. Let's see how I'm</p>	<p style="text-align: right;">Page 88</p> <p>1 magazine.</p> <p>2 Q Okay. And is this the -- this is the</p> <p>3 gallery shoot?</p> <p>4 A This is the original shoot for Fox.</p> <p>5 That's correct.</p> <p>6 Q Okay. And how did you get this</p> <p>7 assignment?</p> <p>8 A My work was appreciated by -- my work was</p> <p>9 appreciated by one of the picture editors there.</p> <p>10 Q Okay. Do you remember that person's name?</p> <p>11 A Richard Kosters. K-o-s-t-e-r-s.</p> <p>12 Q And can you explain sort of from beginning</p> <p>13 to end the process from -- from when you were first</p> <p>14 assigned to work on this shoot 'til however it</p> <p>15 ended.</p> <p>16 MR. COWLEY: Objection as to form.</p> <p>17 You may answer.</p> <p>18 THE WITNESS: You know, you get a phone</p> <p>19 call. They're interested in shooting. You might</p> <p>20 take in-person meetings. You engage in, you know, a</p> <p>21 week or two of production calls and -- and, you</p> <p>22 know, production, which would mean talking to set</p> <p>23 builders.</p> <p>24 You know, I believe we pre-lit this set</p> <p>25 the day before, which would mean there was a</p>
<p style="text-align: right;">Page 87</p> <p>1 doing on battery here.</p> <p>2 So, Mr. Grecco, please let us know once</p> <p>3 you get it.</p> <p>4 THE WITNESS: It's not in yet. Oh, here</p> <p>5 it is. It just came in.</p> <p>6 (Exhibit K marked.)</p> <p>7 BY MS. EDELSTEIN:</p> <p>8 Q And do you recognize this document?</p> <p>9 A It takes a minute to download.</p> <p>10 Okay. Yes, I do.</p> <p>11 Q Okay. And what is it?</p> <p>12 A It's an invoice sent from my agent at the</p> <p>13 time, Keswick Hamilton, to Fox Broadcasting for the</p> <p>14 first -- very first shoot of the television show</p> <p>15 X-Files.</p> <p>16 Q And how did you -- and did you take the</p> <p>17 photos of this photo shoot?</p> <p>18 A I did. I've shot the X-Files three times.</p> <p>19 Once for what's called the gallery shoot, which is</p> <p>20 the publicity and advertising shoot for the show.</p> <p>21 And twice for two different magazines.</p> <p>22 Q And what were those two magazines?</p> <p>23 A So this shoot was '93. The shoot in '94</p> <p>24 was for Entertainment Weekly, who was a regular</p> <p>25 client, and the shoot in '95 was for U.S.A. Weekend</p>	<p style="text-align: right;">Page 89</p> <p>1 pre-light day, and then talent comes in and you</p> <p>2 spend the day shooting talent.</p> <p>3 BY MS. EDELSTEIN:</p> <p>4 Q Okay. And then once you -- were the</p> <p>5 photos taken -- how were the photos taken? For</p> <p>6 example, digitally?</p> <p>7 A 1993, Counselor. On rolls --</p> <p>8 Q I --</p> <p>9 A On rolls of film with medium format</p> <p>10 cameras.</p> <p>11 Q And --</p> <p>12 A Probably a couple of hundred rolls of film</p> <p>13 were shot.</p> <p>14 Q And are you looking at the -- the invoice</p> <p>15 right now?</p> <p>16 A I am.</p> <p>17 Q Okay. And how do you know that there were</p> <p>18 approximately 100 rolls of film?</p> <p>19 A Probably more than that. But we were</p> <p>20 charging 20 or 30 bucks a roll and we billed \$3,000.</p> <p>21 So, I mean, if I can get a calculator.</p> <p>22 Q And then once the -- the photographs were</p> <p>23 taken, what happened next?</p> <p>24 A They were edited. Some remained in our</p> <p>25 studio. Some images went to Fox. We billed the</p>



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1 Q Okay. Thank you.

2 MR. COWLEY: What are we calling that?

3 Are you going to mark it Exhibit D?

4 MS. EDELSTEIN: Yes.

5 MR. COWLEY: And we, throughout the case,

6 refer to the corrected version of Exhibit A to the

7 amended complaint. Can we agree that that's what

8 you just showed him.

9 MS. EDELSTEIN: Yes.

10 Q Okay. So -- so what rights did you

11 have -- or what did Michael Grecco Productions,

12 Inc. -- rights did they have in these images as of

13 1993?

14 A We're talking about the two images ending

15 in 417?

16 Q Yes.

17 A And repeat the question.

18 Q What rights did -- did you have in these

19 images in 1993?

20 A I have all the rights to them.

21 Q So did you have the right to use them for

22 merchandising?

23 A Well, merchandising would have required a

24 model release and/or permission from the network.

25 You don't have the right to use any image for

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1 merchandising without a model release.

2 So as far as the copyright goes, yes, I

3 did. If someone came to me and had the model

4 release or agreement from the network, yes, I did

5 have the right. You know, specifically as you see

6 the invoice to Delphi Network that was submitted to

7 you for \$5,000, they had permission from Fox to use

8 the picture, and I licensed them that photograph.

9 Q So if you didn't have the model release,

10 then what types of ways could you use these images?

11 A In every way as long as the models or the

12 network approved or for editorial use without --

13 without model permission.

14 Q And what rights did Fox have in the

15 images?

16 A They had the right -- the nonexclusive

17 right to use these images to publicize and advertise

18 the show.

19 Q And do you know if -- if Fox used the

20 images for advertising or publicity purposes, did

21 they need to include a credit to you?

22 A My contract says they had to credit me and

23 in most cases they did. They put my name on the --

24 on the slide. Remember, images back then were

25 distributed as physical prints and copy slides.

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1 Q Did you ever see an instance where your

2 name was not included on one of the slides?

3 A Not from Fox. I mean, I've seen my name

4 not included by other people who have swiped these

5 images. But most of the -- most -- and from my

6 recollection, most of the images that I've seen Fox

7 put out had a credit on them. I should say most, if

8 not all, that I've seen.

9 Q Do you know what the copyright notice said

10 on the slides?

11 A Probably, even though it was improper,

12 they probably put 20th Century Fox first and then my

13 name afterwards.

14 Q Did you ever contact Fox about that?

15 A No.

16 Q Why not?

17 A Because you're not going to have a fight

18 with your client about how they -- how they decide

19 to protect their -- their work. I mean, the -- I

20 guess the overall concept of that is that it's their

21 show, and they're letting people know that it's

22 their property. The show is their property.

23 MS. EDELSTEIN: Okay. So we're going to

24 introduce Exhibit L.

25 A Is it coming my way?

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1 Q Just one second.

2 (An off-record discussion was held.)

3 MS. EDELSTEIN: Okay. So yeah. Here's

4 Exhibit L, and it's Bates numbers MGPI 000322

5 through MGPI 000323.

6 (Exhibit L marked.)

7 BY MS. EDELSTEIN:

8 Q So, Mr. Grecco, please let us know once

9 you've received it and if you recognize this

10 document.

11 A I do.

12 Q And what is this document?

13 A It's an invoice for the third X-Files

14 shoot in 1995.

15 Q Okay. And going back to Exhibit D -- or

16 does this -- did you take the image ending in

17 registration No. 596 at this shoot?

18 A Yes. That's correct. What we referred to

19 as the flashlight picture.

20 Q The flashlight picture.

21 Where did you get this document, Exhibit

22 L?

23 A I think we had a printed copy in our -- in

24 our files or it came off the computer. This is the

25 original invoice to my agent for this job for U.S.A.



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1 A Just what it sounds like, a notice of  
2 inquiry.

3 Q Does it include any sort of demand?

4 A No financial demand. It's usually, if you  
5 don't have the right, there's a cease and desist  
6 component to it. And it doesn't -- doesn't ask for  
7 a demand up front.

8 Q So there wouldn't have been a monetary  
9 amount included in that -- in that --

10 A I don't believe -- I don't believe at that  
11 stage. But every firm handles their cease and  
12 desist and notice of inquiries differently. I don't  
13 have that cease and desist specifically in front of  
14 me. It wasn't part of our interrogatories.

15 So if you show it to me, I can see. But I  
16 don't think there -- I don't think there was an  
17 initial demand.

18 Q And how did Fox pick the 14 photographs?

19 MR. COWLEY: Objection to form.

20 You may answer.

21 THE WITNESS: I have no idea. I wasn't  
22 part of that process.

23 BY MS. EDELSTEIN:

24 Q Did you limit the photographs that they  
25 could choose between?

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1 A Yes. They were able -- they -- they --  
2 when they realized they didn't have merchandising  
3 rights or anything that -- that went beyond the  
4 advertising and publicity of the show, and they  
5 wanted merchandising rights, they came back to me  
6 and asked if they could do a merchandising  
7 buy-out -- and it was strictly for merchandising --  
8 of 14 images.

9 And they asked if they could select images  
10 from all three shoots and we agreed. In the  
11 negotiation with my agent, they expanded it -- that  
12 was -- I had worked with David Oakes, the attorney  
13 from Fox, in that license.

14 And when he came to my agent, my agent was  
15 willing to expand that to 14 images. It was  
16 originally 12. But I have no -- I was not involved  
17 in their process of picking images.

18 Q And were any of those 14 images originally  
19 in the complaint in this action?

20 A Yes.

21 Q Is that why you withdrew those images from  
22 the complaint?

23 A Yes, because we supplement- -- as part of  
24 that settlement, we supplementally -- supplementally  
25 went from giving them merchandising rights to a

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1 transfer of copyright to those 14 images.

2 Q And why did you do that?

3 A Because they asked for it. Because it was  
4 part of a -- give and take of a negotiation.  
5 Because we thought it would be valuable to have a  
6 definitive writing about who owns what.

7 Q So --

8 A For cases like this.

9 Q So what you had before was not a  
10 definitive writing?

11 MR. COWLEY: Objection as to form.

12 You may answer.

13 THE WITNESS: Yeah, I don't think my  
14 agent's words "advertising and publicity shoot" are  
15 probably as descriptive as they could be.

16 BY MS. EDELSTEIN:

17 Q And what did you get from the agreement  
18 with Fox if they got the -- the transfer of rights  
19 of the 14 images?

20 A A clearly defined agreement that states  
21 that we have co-exclusive rights, that I have the  
22 right to license these images, and that I had the  
23 right to license the images prior to the agreement.

24 Q Are you aware whether Fox had ever  
25 distributed the photos from the gallery shoot as

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1 publicity handouts?

2 MR. COWLEY: Objection as to form.

3 You may answer.

4 THE WITNESS: That was the purpose of the  
5 shoot. The purpose of the shoot was to send out the  
6 images to the particular magazines and publications  
7 that Fox knew was -- were doing a review of the  
8 show.

9 BY MS. EDELSTEIN:

10 Q And do you know how the publicity handouts  
11 appeared when they were sent out?

12 A They were usually in duplicate slide form  
13 and 8-by-10 prints.

14 Q And are you aware whether there are any  
15 restrictions regarding the use that were explained  
16 in the publicity handouts?

17 MR. COWLEY: Object as to form.

18 THE WITNESS: We can hardly hear you,  
19 Steve.

20 MR. COWLEY: Objection as to form.

21 You may answer.

22 THE WITNESS: I -- I know there are terms  
23 and texts on many of those images about what could  
24 be done with the pictures and what can't. I can't  
25 recite it to you right now. But there were -- there



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1 were restrictions on -- they were restrictions on  
 2 how the images can get used.  
 3 BY MS. EDELSTEIN:  
 4 Q And are you aware of what any of those  
 5 were?  
 6 MR. COWLEY: Objection as to form.  
 7 You may answer.  
 8 THE WITNESS: Asked and answered,  
 9 Counselor. I -- I don't have the -- I don't have  
 10 the text in front of me.  
 11 BY MS. EDELSTEIN:  
 12 Q I believe you said you couldn't recite  
 13 them. But do you have any idea of -- of what they  
 14 were? And if the answer is no, that's fine.  
 15 A No, I don't.  
 16 Q Do you know if there was any time  
 17 restriction noted in the publicity handout?  
 18 MR. COWLEY: Objection as to form.  
 19 You may answer.  
 20 THE WITNESS: Time restriction for the  
 21 publicity to use it?  
 22 BY MS. EDELSTEIN:  
 23 Q Correct.  
 24 A I don't. I -- I -- I don't have -- I  
 25 don't have the images in front of me and -- and the

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1 text that goes out. But, in general, the network  
 2 controls who uses those pictures and if they're  
 3 going to write a favorable story about their show.  
 4 And they want the publicity from that particular  
 5 newspaper or magazine.  
 6 So, in general, it's up to the network who  
 7 gets pictures, not up to a third-party agency who  
 8 decides to steal them to distribute them to anyone  
 9 who pays.  
 10 BY MS. EDELSTEIN:  
 11 Q And do you know if -- if the publicity  
 12 handouts were -- were free?  
 13 MR. COWLEY: Objection as to form.  
 14 You may answer.  
 15 THE WITNESS: When Fox gave them out for  
 16 promotion of the show, I believe there are instances  
 17 that they're free. I also know that Fox  
 18 Broadcasting has a licensing department for which  
 19 they charge money for the use of those images.  
 20 BY MS. EDELSTEIN:  
 21 Q And have you ever seen a license issued by  
 22 Fox's licensing department --  
 23 MR. COWLEY: Objection --  
 24 BY MS. EDELSTEIN:  
 25 Q -- out of respect to -- to any X-Files

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1 images?  
 2 MR. COWLEY: Objection as to form.  
 3 You may answer.  
 4 THE WITNESS: I -- I am not privy to any  
 5 of the inner workings of Fox of how they distribute  
 6 images for press or license images.  
 7 BY MS. EDELSTEIN:  
 8 Q All right. So --  
 9 (An off-record discussion was held.)  
 10 MS. EDELSTEIN: All right. So let's  
 11 discuss -- or we'll introduce Defendant's Exhibit N,  
 12 which bears Bates numbers MGPI 002743 to MGPI  
 13 002744.  
 14 (Exhibit N marked.)  
 15 BY MS. EDELSTEIN:  
 16 Q Let us know when you've received it and if  
 17 you recognize it.  
 18 A Okay. Okay. I've -- I've seen it.  
 19 Q And do you recognize this -- this  
 20 correspondence?  
 21 A I do.  
 22 Q And are any of the individuals listed  
 23 there your attorneys?  
 24 A Yeah. The attorneys from One, LLP. So  
 25 Peter Afrasiabi and Vish who was there at the time.

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1 Q And is this part of the correspondence you  
 2 were referencing with respect -- that -- that  
 3 followed after the notice of inquiry?  
 4 A No, I think this was another one.  
 5 There -- there was a -- Fox had cited a -- Fox had  
 6 cited a letter from Higbee & Associates, not One,  
 7 LLP, when they reached out to us to handle this.  
 8 Q Just to break that down a little, do you  
 9 know -- well, first of all, do you know -- did this  
 10 have to do with the gallery shoot as well?  
 11 A I don't see an image attached here, so I'm  
 12 not going to give testimony to what image it was.  
 13 They could have been out of their minds and it could  
 14 not -- you know, they could have just been clearly  
 15 wrong and it not be -- it could have not be -- been  
 16 something that -- I'm looking at these past  
 17 documents with reference numbers on them now.  
 18 But since I don't know that VA No. 741,  
 19 I'm not sure what image it is. And I don't know if  
 20 it was gallery or Entertainment Weekly or U.S.A.  
 21 Weekend.  
 22 Q Okay. We should have 741. So let's take  
 23 a look.  
 24 A Many people make the wrong assumption that  
 25 things I shot for magazines, which are 100 percent



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1 book and documentary film called "Naked Ambition"

2 which is about to come down. I've got two startups

3 which don't have their websites up yet.

4 Q What about

5 mppstockphotos.photoshelter.com?

6 A Yes, we have that website also. I don't

7 host it. I think your question asked what do you

8 host. I don't host that website.

9 Q So what is your connection to that

10 website?

11 A It's just hosted by PhotoShelter. That's

12 all. I don't host it. I specifically answered your

13 question, and your question wasn't broad enough.

14 You asked me what websites I hosted.

15 Q Okay. And do you put images available for

16 license on michaelgrecco.com?

17 A No.

18 Q Do you put images available for license on

19 mpp.stockphotos.com -- or the PhotoShelter website?

20 A Yes. On mppstockphotos.com. Correct.

21 Q And do you have any other websites that

22 you are associated with?

23 A I'm the founder of ASCRL, you know, which

24 is an independent organization. I'm on the

25 executive board. I created the organization. I

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1 don't think so. But I -- I -- I'm an entrepreneur.

2 I have my fingers in lot of businesses.

3 MS. EDELSTEIN: All right. I think that

4 that is -- that's it on our end.

5 THE WITNESS: Cool.

6 MR. COWLEY: You're all set.

7 THE WITNESS: You -- you -- don't you need

8 to say your thing and --

9 MR. COWLEY: Oh, I'm sorry. On the

10 record, yes.

11 As of the completion of the testimony from

12 the beginning to the end should -- should be

13 designated attorneys' eyes only until we're given an

14 opportunity after we review and -- excuse me --

15 receive and review the transcript to designate a

16 smaller subset.

17 But there's been testimony about

18 attorneys' eyes only documents and information

19 throughout the -- the deposition today. So we need

20 to start by designating it all as such.

21 MS. EDELSTEIN: We consent to that.

22 THE WITNESS: Thanks, everyone.

23 THE REPORTER: Mr. Cowley, do you want to

24 just put your copy order on the record, because

25 that's fine with me.

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1 MR. COWLEY: Yeah, I --

2 THE VIDEOGRAPHER: And can you order, too,

3 please, Counsel.

4 MR. COWLEY: I'm sorry. I didn't hear

5 what you said.

6 THE VIDEOGRAPHER: Who would like to order

7 the video?

8 MS. EDELSTEIN: Oh, we do. Defendants'

9 counsel.

10 THE VIDEOGRAPHER: Okay.

11 And, Mr. Cowley?

12 MR. COWLEY: No. Thanks. In response to

13 your question, I -- I sent the e-mail earlier.

14 THE REPORTER: Okay. I didn't have a

15 chance to read it. That'll work.

16 MR. COWLEY: It's in the e-mail. If

17 there's any question, just send me an e-mail.

18 THE REPORTER: Okay. No problem. Thank

19 you.

20 THE VIDEOGRAPHER: This concludes the

21 deposition of Michael Grecco. We're going off the

22 record. The time is 4:21 P.M.

23 (The deposition concluded at 4:21 P.M.)

24

25

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1 **DECLARATION UNDER PENALTY OF PERJURY**

2

3

4 I, MICHAEL GRECCO, do hereby certify under

5 penalty of perjury that I have read the foregoing

6 transcript of my deposition taken on September 14,

7 2020; that I have made such corrections as appear

8 noted on the Deposition Errata Page, attached

9 hereto, signed by me; that my testimony contained

10 herein, as corrected, is true and correct.

11

12 Dated this \_\_\_\_\_ day of \_\_\_\_\_,

13 2020, at \_\_\_\_\_, California.

14

15

16 \_\_\_\_\_

17 MICHAEL GRECCO

18 Deponent

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1 UNITED STATES DISTRICT COURT

2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 I, DONNA J. RUDOLPH, RPR, CSR No. 9652,

4 Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place therein set forth,  
7 at which time the witness was put under oath by me;

8 That the testimony of the witness, the  
9 questions propounded, and all objections and  
10 statements made at the time of the examination were  
11 recorded stenographically by me and were thereafter  
12 transcribed;


13 That a review of the transcript by the  
14 deponent [was not] requested;

15 That the foregoing is a true and correct  
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative  
18 or employee of any attorney of the parties, nor  
19 financially interested in the action.

20 I declare under penalty of perjury under  
21 the laws of California that the foregoing is true  
22 and correct.

23 Dated this 20th day of September, 2020.

24 

Donna J. Rudolph, RPR

25 CA CSR No. 9652, NV CCR No. 420

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1

## 2 E R R A T A S H E E T

3 I, MICHAEL GRECCO, do hereby certify that I  
4 have read the foregoing transcript of my testimony, and  
5 further certify that it is a true and accurate record  
6 of my testimony (with the exception of the corrections  
7 listed below).

8 PAGE LINE CORRECTION

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

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25 Date \_\_\_\_\_

MICHAEL GRECCO